

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

Deanna McBrearty and Marylynn Hartsel,  
individually, derivatively and on behalf of all  
others similarly situated,

Plaintiffs,

-against-

The Vanguard Group, Inc., George U. Sauter,  
Duane F. Kelly, John J. Brennan, Charles D. Ellis,  
Rajiv L. Gupta, Amy Gutmann, JoAnn Heffernan  
Heisen, Andre F. Perold, Alfred M. Rankin, Jr., J.  
Lawrence Wilson, Acadian Asset Management,  
LLC, Ronald D. Frashure, John R. Chisholm, Brian  
K. Wolahan, AllianceBernstein LP, Henry S.  
D'Auria, Sharon E. Fay, Kevin F. Simms,  
Marathon Asset Management, LLP, William J.  
Arah, Jeremy H. Hosking, and Neil M. Ostrer,

Defendants,

-and-

Vanguard International Equity Index Funds, d/b/a  
Vanguard European Stock Index Fund, and  
Vanguard Horizon Funds, d/b/a Vanguard Global  
Equity Fund,

Nominal Defendants.

08 CV 7650 (DLC)

ECF Case

**VANGUARD DEFENDANTS' REQUEST FOR JUDICIAL NOTICE  
IN SUPPORT OF THEIR MOTION TO DISMISS**

Defendants The Vanguard Group, Inc., George U. Sauter, and Duane F. Kelly (the  
“Vanguard Defendants”), hereby request that the Court take judicial notice, pursuant to Federal

Rule of Evidence 201, of the following documents cited in the Vanguard Defendants' Motion to Dismiss Plaintiffs' Complaint:

- Stipulation and Proposed Order of Voluntary Dismissal as to AllianceBernstein Defendants, dated Oct. 7, 2008 (Exhibit A);
- London Stock Exchange Listing, from <http://www.londonstockexchange.com>, for Party Gaming PLC (Exhibit B), Sportingbet PLC (Exhibit C), and NETeller PLC (Exhibit D); and
- Vienna Stock Exchange (Wiener Borse) Listing, from <http://en.wienerborse.at>, for BWin Interactive Entertainment AG (Exhibit E).

These documents are properly subject to judicial notice pursuant to Federal Rule of Evidence 201. The Stipulation dismissing AllianceBernstein (Exhibit A) is a pleading filed with the Court in this action. *See Kavowras v. New York Times Co.*, 328 F.3d 50, 57 (2d Cir. 2003) (noting that “[j]udicial notice may be taken of public filings”). Stock exchange listings (Exhibits B, C, D, & E) are frequently subject to judicial notice on a motion to dismiss. *See Ganino v. Citizens Utilities Co.*, 228 F.3d 154, 167 (2d Cir. 2000) (“[T]he district court may take judicial

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notice of well-publicized stock prices without converting the motion to dismiss into a motion for summary judgment.”); *In re Merrill Lynch & Co. Research Reports Sec. Litig.*, 272 F. Supp. 2d 243, 254 n.9 (S.D.N.Y. 2003) (taking judicial notice of stock prices on a motion to dismiss).

DATED: Los Angeles, California  
October 27, 2008

QUINN EMANUEL URQUHART OLIVER &  
HEDGES, LLP

By: s/Harry A. Olivar, Jr.

Harry A. Olivar, Jr.

harryoliv@quinnemanuel.com

865 South Figueroa Street, 10th Floor

Los Angeles, California 90017-2543

Telephone: (213) 443-3000

Facsimile: (213) 443-3100

Sascha N. Rand

sascharand@quinnemanuel.com

Quinn Emanuel Urquhart Oliver & Hedges,  
LLP

51 Madison Avenue, 22nd Floor

New York, NY 10010

Telephone: (212) 849-7000

Facsimile: (212) 849-7100

*Attorneys for Defendants The Vanguard Group,  
Inc., George U. Sauter, and Duane F. Kelly*

**EXHIBIT A**

(016,51

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DEANNA McBREARTY and MARYLYNN HARTSEL,  
individually, derivatively and on behalf of all others  
similarly situated,

Plaintiffs,

-against-

THE VANGUARD GROUP, INC. GEORGE U. SAUTER,  
DUANE F. KELLY, JOHN J. BRENNAN, CHARLES D.  
ELLIS, RAJIV L. GUPTA, AMY GUTMANN, JOANN  
HEFFERNAN HEISEN, ANDRE F. PEROLD, ALFRED  
M. RANKIN, JR., and J. LAWRENCE WILSON,  
ACADIAN ASSET MANAGEMENT, LLC, RONALD D.  
FRASHURE, JOHN R. CHISHOLM, BRIAN K.  
WOLAHAN, ALLIANCEBERNSTEIN LP, HENRY S.  
D'AURIA, SHARON E. FAY, KEVIN F. SIMMS,  
MARATHON ASSET MANAGEMENT, LLP, WILLIAM  
J. ARAH, JEREMY H. HOSKING, and NEIL M.  
OSTRER,

Defendants,

-and-

VANGUARD INTERNATIONAL EQUITY INDEX  
FUNDS, d/b/a VANGUARD EUROPEAN STOCK  
INDEX FUND, and VANGUARD HORIZON FUNDS,  
d/b/a VANGUARD GLOBAL EQUITY FUND,

Nominal Defendants.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 10/14/08

Case No. 08 CV 7650 (DLC)

**STIPULATION AND  
~~PROPOSED~~ ORDER OF  
VOLUNTARY DISMISSAL AS  
TO ALLIANCEBERNSTEIN  
DEFENDANTS**

Hon. Denise L. Cote

Pursuant to Fed. R. Civ. P. 41(a), and by agreement between counsel to  
Defendants AllianceBernstein L.P., Henry S. D'Auria, Sharon E. Fay and Kevin F.  
Simms (collectively the "AllianceBernstein Defendants") and counsel to Plaintiffs, the  
undersigned stipulate that the AllianceBernstein Defendants be dismissed from this action  
without prejudice based upon due consideration of the following:

1. The Verified Class Action and Derivative Complaint filed in this action asserted various class action and derivative claims against the AllianceBernstein Defendants under common law and 18 U.S.C. §1962. These claims were premised on alleged investments by the AllianceBernstein Defendants in certain “gambling businesses” while AllianceBernstein L.P. was acting as a subadvisor to certain mutual fund portfolios for which The Vanguard Group, Inc. is the registered investment advisor. (*See, e.g.*, Complaint ¶¶ 1-9.)

2. Since the filing of the Complaint, the AllianceBernstein Defendants have provided an affirmation, and other evidence, to Plaintiffs’ counsel establishing that the AllianceBernstein Defendants did not invest or have any knowledge of any investments in the subject gambling businesses (which were Party Gaming PLC, Sportingbet PLC, BWin Interactive Entertainment AG, and NETeller PLC) for the Vanguard portfolios.

3. In addition, counsel to Defendant The Vanguard Group, Inc. has represented to Plaintiffs’ counsel that, based on a reasonable inquiry, he believes the statements made in the affirmation provided by AllianceBernstein to be true.

4. Under these circumstances, the undersigned parties agree that voluntary dismissal of the AllianceBernstein Defendants from this action is appropriate.

5. With respect to the putative class action claims asserted in this action, the notice and approval provisions of Fed. R. Civ. P. 23(e) do not apply because no class has been certified.

6. With respect to the derivative claims asserted in this action, Fed. R. Civ. P. 23(e) provides that a derivative action may be voluntarily dismissed subject to the Court's approval.

NOW, THEREFORE, IT IS HEREBY STIPULATED that the AllianceBernstein Defendants be dismissed as defendants from this action without prejudice and without cost to any party.

DATED: October 7, 2008

HANLY CONROY BIERSTEIN SHERIDAN  
FISHER & HAYES LLP

By: 

Thomas I. Sheridan III

112 Madison Avenue  
New York, NY 10016-7416

Tel: (212) 784-6400

Fax: (212) 784-6420

Email: tsheridan@hanlyconroy.com

*Attorneys for Plaintiffs*

MILBANK TWEED HADLEY & McCLOY  
LLP

By: 

Sean M. Murphy

One Chase Manhattan Plaza  
New York, NY 10005-1413

Tel: (212) 530-5000

Fax: (212) 530-5219

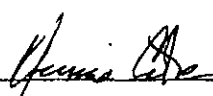
Email: smurphy@milbank.com

*Attorneys for Defendants AllianceBernstein LP,  
Henry S. D'Auria, Sharon E. Fay, and Kevin F.  
Simms*

IT IS SO ORDERED.

Dated: 

October 14, 2008

  
Hon. Denise L. Cote  
U.S. District Judge

NY2.#4807134v1  
10/10/08 10:14 AM

**EXHIBIT B**



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## PRTY PARTYGAMING PLC ORD 0.015P

PARTYGAMING | Currency GBX | Primary Listed Share  
All data delayed by at least 15 minutes

As at 22-Oct-2008 18:27:21

127.250 ▼ -5.50 -4.14%

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Bid	Offer	Volume	High	Low	Last Close
125.00	127.25	570,556	128.00	122.50	127.25

### Results of opening auction

Price : 125.75

Volume : 600

### Results of closing auction

Price : 127.25

Volume :

Special conditions

NONE

Period name

EOA

### Last 5 trades

Time/Date	Price	Volume	Trade value	Type
16:29:55 22-Oct-2008	125.25	2,667	3,340.42	Uncrossing
16:29:45 22-Oct-2008	125.25	1,929	2,416.07	Automatic 1
16:29:33 22-Oct-2008	125.00	132	165.00	Automatic 1
16:29:19 22-Oct-2008	125.00	1,492	1,865.00	Automatic 1
16:29:19 22-Oct-2008	125.00	6,666	8,332.50	Automatic 1

Select news source [Regulate](#)

### Latest news stories

Time/Date	Code	Name	Headline	
09:00 22-Oct-08	PRTY	PartyGaming Plc	Addition of new games from WagerWorks	
14:30 20-Oct-08	CRP	Cryptologic Ltd	Licenses top branded casino games to PartyGaming	
14:21 20-Oct-08	PRTY	PartyGaming Plc	Addition of New Games from Cryptologic	
07:00 10-Oct-08	PRTY	PartyGaming Plc	Director/PDMR Shareholding	
09:25 30-Sep-08	PRTY	PartyGaming Plc	Total Voting Rights	

## Charting

### Share price performance

Source : London



Timeframe : 1-year

☐ 30-day MA

☐ 90-day MA

☒ Grid

Compare with

or choose from

and

Select FTSE TM index ...

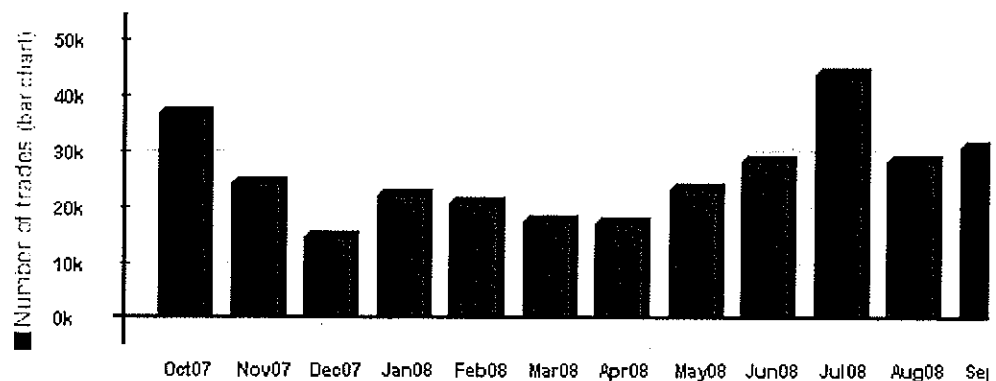
Select FTSE TM sector ...

You can customise the chart using the options above. To zoom in on a particular section of the chart drag your mouse across the chart. To zoom out, double click anywhere on the chart.

## Number & value of trades

View : Number of trades - monthly

Source : London



## Company information

Updated monthly

Company address

711 Europort, Gibraltar

Company website

<http://www.partygaming.com>

Market cap (in millions)\*

£546.29

Listing/Admission to trading

30 June 2005

Trading system

SETS

Market

International Main Market

\*The market capitalisation of companies reflects the London listed element only. These figures are approximate and are

Last updated: 21-Oct-2008

### Trading information

22-Oct-2008

FTSE Index

FTSE 250; FTSE 350; FTSE ALL-SHARE; FTSE 250 EX INVESTMI  
FTSE 350 EX INVESTMENT TRUSTS; FTSE 350 HIGH YIELD; FT  
EX INVESTMENT TRUSTS;

FTSE Sector

Travel & Leisure

FTSE Sub-sector

Gambling

Country of share register

JE

Segment

STMM

MiFID status

Regulated Market

Exchange market size

20000

SEDOL

B0B3SV4

ISIN number

GI000A0MV757

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**SBT SPORTINGBET PLC ORD 0.1P**

SPORTINGBET | Currency GBX  
All data delayed by at least 15 minutes

As at 22-Oct-2008 18:38:16

**28.500 ▼ -0.75 -2.56%**

**sportingbet Plc.**



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Bid	Offer	Volume	High	Low	Last Close
28.00	28.50	452,278	29.10	28.04	28.50

Results of opening auction

Price : 28.75 Volume : 13354

Special conditions

NONE

Results of closing auction

Price : 28.50 Volume :

Period name

EOA

Last 5 trades

Time/Date	Price	Volume	Trade value	Type
16:44:51 22-Oct-2008	29.10	50,000	14,550.00	Ordinary Tr
16:44:51 22-Oct-2008	29.10	50,000	14,550.00	Cancelled
16:44:45 22-Oct-2008	28.10	50,000	14,050.00	Ordinary Tr
16:38:08 22-Oct-2008	28.50	25,000	7,125.00	Ordinary Tr
16:11:12 22-Oct-2008	28.00	4,000	1,120.00	Uncrossing

Select news source [Regulat](#)

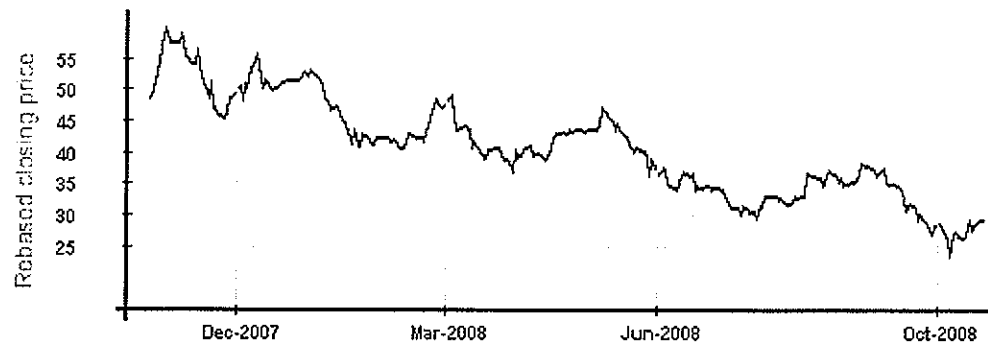
Latest news stories

Time/Date	Code	Name	Headline	
16:20 20-Oct-08	SBT	Sportingbet PLC	Holding(s) in Company	
12:53 15-Oct-08	SBT	Sportingbet PLC	Purchase of own shares	
07:00 15-Oct-08	SBT	Sportingbet PLC	Final Results	
15:50 14-Oct-08	SBT	Sportingbet PLC	Turkey Update	
07:00 10-Oct-08	SBT	Sportingbet PLC	Holding(s) in Company	

Charting

Share price performance

Source : London



Timeframe : 1-year

☐ 30-day MA

☐ 90-day MA

☒ Grid

Compare with

or choose from

and

Select FTSE TM index ...

Select FTSE TM sector ...

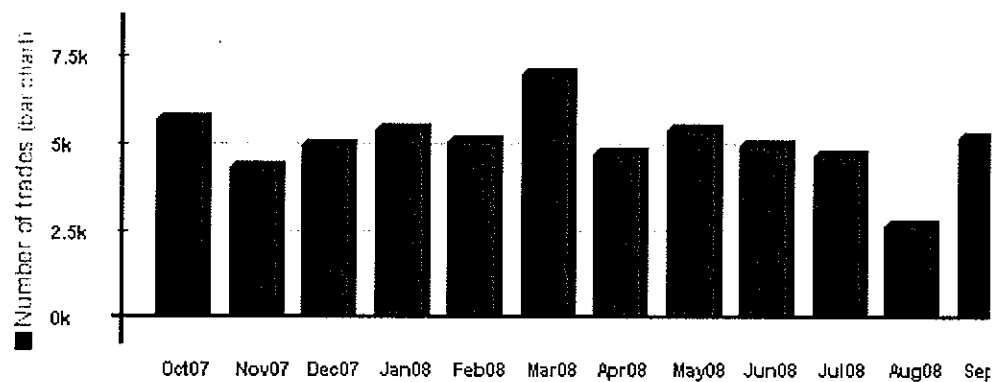
You can customise the chart using the options above. To zoom in on a particular section of the chart drag your mouse across the chart. To zoom out, double click anywhere on the chart.

#### Number & value of trades

View : Number of trades - monthly

Apply

Source : London :



#### Company information

Updated monthly

Company address

4th Floor, 45 Moorfields, London, EC2Y 9AE, United Kingdom

Company website

www.sportingbetplc.com

Market cap (in millions)\*

£136.96

Listing/Admission to trading

30 January 2001

Trading system

SETS

Market

AIM

\*The market capitalisation of companies reflects the London listed element only. These figures are approximate and are Last updated: 21-Oct-2008

#### Trading information

22-Oct-2008

FTSE Index	FTSE AIM ALL-SHARE; FTSE AIM 100; FTSE AIM All-Share Index
FTSE Sector	Leisure; FTSE AIM UK 50;
FTSE Sub-sector	Travel & Leisure
Country of share register	Gambling
Segment	GB
MiFID status	AMSM
Exchange market size	MTF
SEDOL	18000
ISIN number	0951625
	GB0009516252

**EXHIBIT D**



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**NLR NETELLER PLC ORD 0.01P**

NETELLER | Currency GBX

All data delayed by at least 15 minutes

As at 22-Oct-2008 18:38:50

**55.000 0.00 0.00**



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Free Company Profile

Bid	Offer	Volume	High	Low	Last Close
53.50	55.00	51,518	55.00	53.75	55.00

Results of opening auction

Price : - Volume : -

Special conditions

NONE

Results of closing auction

Price : 55.00 Volume :

Period name

EOA

Last 5 trades

Time/Date	Price	Volume	Trade value	Type
16:16:29 22-Oct-2008	53.59	370	198.28	Uncrossing
16:07:09 22-Oct-2008	53.75	5,000	2,687.50	Ordinary Tr
14:21:40 22-Oct-2008	54.25	68	36.89	Automatic T
14:07:32 22-Oct-2008	54.25	5,000	2,712.50	Automatic T
12:46:34 22-Oct-2008	54.33	559	303.68	Automatic T

Select news source [Regulat](#)

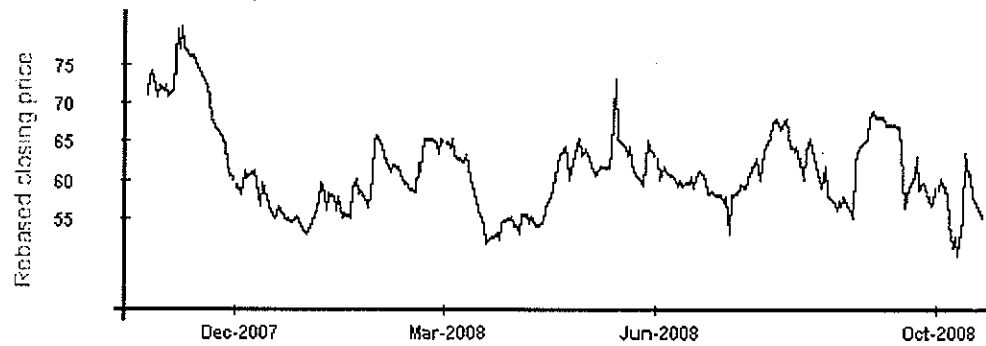
Latest news stories

Time/Date	Code	Name	Headline	
07:00 21-Oct-08	NLR	NETeller PLC	Holding(s) in Company	
11:31 10-Oct-08	NLR	NETeller PLC	Director/PDMR Shareholding	
15:10 09-Oct-08	NLR	NETeller PLC	Holdings in Company	
07:00 09-Oct-08	NLR	NETeller PLC	Change of Name and Notice of EGM	
16:36 01-Oct-08	NLR	NETeller PLC	Holdings in Company	

Charting

Share price performance

Source : London



Timeframe : 1-year

☐ 30-day MA

☐ 90-day MA

☒ Grid

Compare with

or choose from

and

Select FTSE TM index ...

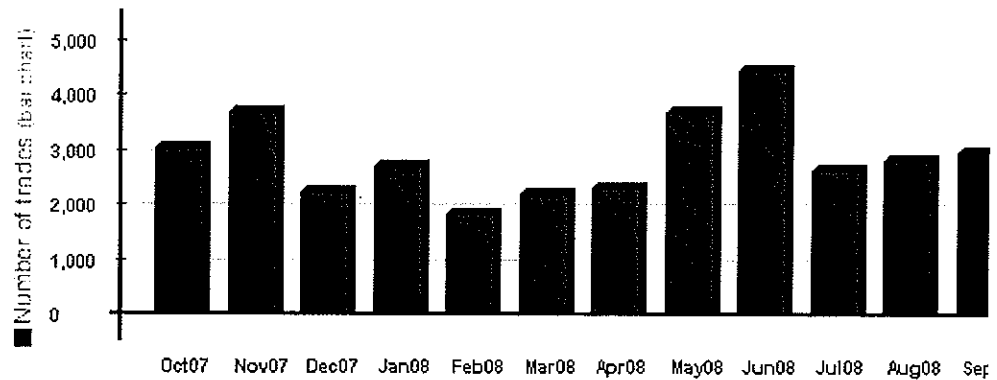
Select FTSE TM sector ...

You can customise the chart using the options above. To zoom in on a particular section of the chart drag your mouse across the chart. To zoom out, double click anywhere on the chart.

#### Number & value of trades

View : Number of trades - monthly

Source : London :



#### Company information

Updated monthly

Company address

4th Floor, Standard Bank House, 1 Circular Road, Douglas, Isle Of Man, United Kingdom

Company website

[www.netellerplc.com](http://www.netellerplc.com)

Market cap (in millions)\*

£65.96

Listing/Admission to trading

14 April 2004

Trading system

SETS

Market

AIM

\*The market capitalisation of companies reflects the London listed element only. These figures are approximate and are last updated 21-Oct-2008

#### Trading information

22-Oct-2008

FTSE Index	FTSE AIM ALL-SHARE; FTSE AIM All-Share Index - Financial Servi
FTSE Sector	General Financial
FTSE Sub-sector	Specialty Finance
Country of share register	GB
Segment	AMSM
MiFID status	MTF
Exchange market size	15000
SEDOL	3426454
ISIN number	GB0034264548

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**EXHIBIT E**

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updated: 22.10.2008 20:00:23

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**BWIN INT. ENTERT. AG**Last Price **14.00** -1.06%

ISIN: AT0000767553

Date, Time 10/22/2008, 17:33:03

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[Overview](#) | [Contact](#) | [Corporate Actions](#) | [Change of significant voting right thresholds](#)

## Profile

Company: **bwin Interactive Entertainment AG**

Address: Börsegasse 11/Elevator 3/Top floor, 1010 Wien , Österreich

Website: <http://www.bwin.ag>

Short name: BWIN INT. ENTERT. AG

Common Stock	AT0000767553	Included in the following Indices	ATX, AT
Security-Symbol	BWIN	Shares included	
Market	Official Market	First day of trading	
Market Segment	Prime Market	Link to following ad-hoc reporting system	
Time of Opening Auction	9:15	Accounting	
Time of Intraday Auction	12:00	Business Year	
Time of Closing Auction	17:30		

Members of the Management board (Made available by the company)

Mr. Norbert Teufelberger, Co-CEO

Mr. Manfred Bodner, Co-CEO

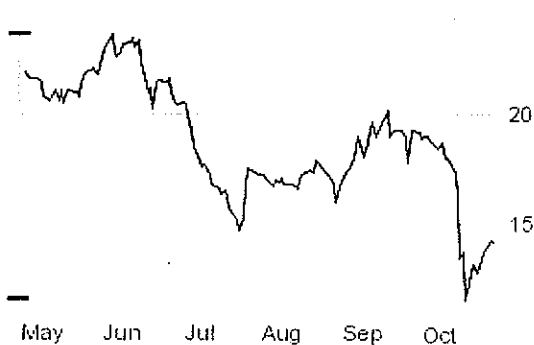
Updated: Wednesday, 10-22-2008

updated: 22.10.2008 20:04:03

Prices 15 minutes delayed  
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**BWIN INT. ENTERT. AG**Last Price **14.00** -1.06%

ISIN: AT0000767553

Date, Time 10/22/2008, 17:33:03

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Change (%)	-1.06%	Year high*
Change (abs.)	-0.15	Year low*
Last volume**	10,614	Total turnover volume**
Bid / Ask	- / -	Total turnover value**
Bid / Ask Size	0 / 0	Number of trades
Bid / Ask Order Indicator	0 / 0	Indicative Price
Open	13.94	Surplus Indicator
High	14.07	Surplus Quantity
Low	13.52	Trading form
Historic close	14.15	

Closed

derivative products:

[Warrants](#)[Certificates](#)

## Details

Market Segment	Prime Market	No of shares issued	32,728,763	Dividend
Type of Security	share	Currency	EUR	Dividend Ex Date
Market	Official Market	Auction with liquidity providers	yes	Dividend Bonus
Trading hours	09:15 - 17:33	Sector	Consumer Services	Subsector
Smallest tradable unit	1 piece			

## Figures

	ATX Five	ATX Prime	ATX		2008	2007
rel. Performance (3 months)	29.82	25.46	23.92	Price Value ratio	-	6.64
Beta (3 months)	0.55	0.71	0.70	Capitalization	462.97	869.74
Correlation (3 months)	0.54	0.61	0.59	EPS Basic Growth in %	-	+4.77%
				Earnings Yield	-	-
				PEG	-	-
Technical figures				Cash Flow per Share	-	2.77
Volatility (3 months)			72.90	Equity ratio	-	43.72%
VWAP			13.81	Earnings-per-Share	-	1.55
				Price/Earnings ratio	-	17.17

	5 Days	30 Days	100 Days	Price/Cash Flow	-	9.52
Average price	13.68	16.89	17.92			
Average volume	94,778	122,470	115,390			

\* Last 52 weeks based on closing value

\*\* Double Counting